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FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 14-82; DA 14-703]

Patrick Sullivan (Assignor) and Lake Broadcasting, Inc. (Assignee), Application for Consent to Assignment of License of FM Translator Station W238CE, Montgomery, Alabama

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing to determine whether the application of Patrick Sullivan (Sullivan), licensee of FM Translator Station W238CE, Montgomery, Alabama, to assign the W238CE license to Lake Broadcasting, Inc. (LBI), File No.

BALFT-20120523ABY (Assignment Application), should be granted. The hearing will include issues regarding whether LBI's sole shareholder, Michael S. Rice (Rice), is qualified to be a Commission licensee, based on prior proceedings in which authorizations held by companies owned by Rice were revoked based on Rice's felony convictions, and on misrepresentations and lack of candor by Rice and his companies.

DATES: Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please file documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Each document that is filed in this proceeding must display on the front page the document number of this hearing, "MB Docket No. 14-82."

FOR FURTHER INFORMATION CONTACT: Gary Schonman, Special Counsel, Enforcement Bureau, (202) 418-1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order (Order), DA 14-703, adopted May 23, 2014, and released May 23, 2014. The full text of the Order is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street, SW, Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Summary of the Hearing Designation Order

1. This Order commences a hearing proceeding before an Administrative Law Judge to determine whether the application of Sullivan for Consent to Assignment of the License of FM Translator Station W238CE, Montgomery, Alabama (Station), to LBI (Assignment Application) should be granted. LBI's president, director, and sole shareholder, Rice, is a convicted felon who previously held radio station authorizations, through LBI and other entities, which were revoked on the basis of Rice's felony convictions and misrepresentation to and lack of candor before the Commission.¹

¹ See Contemporary Media, Inc., Initial Decision, 12 FCC Rcd 14254 (ALJ 1997) (CMI ID); Contemporary Media, Inc., Decision, 13 FCC Rcd 14437 (1998) (CMI Decision), recon. denied, Order, 14 FCC Rcd 8790 (1999), aff'd sub nom., Contemporary Media, Inc. v. FCC, 214 F.3d 187 (D.C. Cir. 2000) (Contemporary Media), cert. denied, 532 U.S. 920, 121 S.Ct. 1355 (2001).

Significant and material questions exist as to whether, on the basis of Rice's criminal convictions and misrepresentations, Rice and, hence, LBI possess the basic character qualifications to hold the Station authorization. Because the Media Bureau (Bureau) is unable to make a determination on the record currently before it that grant of the Assignment Application would serve the public interest, convenience and necessity, it designates the Assignment Application for hearing.

2. On July 5, 1994, Rice was convicted of four felony counts of sodomy, six felony counts of deviate sexual assault in the first degree, and two felony counts of deviate sexual assault in the second degree, involving five children. Rice was sentenced to a total of 84 years in prison, which ran concurrently, thus he was incarcerated for just over five years, and was released from prison in December 1999. At the time of his 1994 conviction, Rice held a 67.5 percent ownership interest in LBI; he subsequently became and remains the owner of all issued shares of LBI's stock.

3. By Order to Show Cause and Notice of Apparent Liability, the Commission directed LBI and two other Rice-owned broadcast companies to show cause why their licenses and construction permits should not be revoked. Following a full and complete evidentiary hearing, the Presiding Administrative Law Judge concluded that Rice's felony convictions and his companies' misrepresentation and lack of candor constituted independent grounds for disqualification of the licensees and revocation of their authorizations. The conclusions reached in the Initial Decision were affirmed through all administrative and judicial appeals.

4. On May 23, 2012, Sullivan filed the Assignment Application, which was accepted for filing May 24, 2012. Sullivan and LBI acknowledge Rice's criminal history, but argue

that Rice is now qualified to be a Commission licensee because he has been sufficiently rehabilitated. The Assignment Application was opposed by Child Protect, a Children's Advocacy Center serving Montgomery and surrounding Alabama counties, which filed a December 20, 2012, informal objection.

5. Under Commission policy regarding character qualifications non-FCC misconduct, including evidence of any felony conviction, may raise a substantial and material question of fact concerning a licensee's character. Conviction of certain felonies involving misconduct so egregious as to shock the conscience and evoke almost universal disapprobation might constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee. The U.S. Court of Appeals for the District of Columbia Circuit opined that sexual offenses involving minors fall into this category. (Contemporary Media, 214 F.3d at 193)

6. The Bureau finds that substantial and material questions remain regarding whether Rice has been sufficiently rehabilitated and, therefore, is qualified to hold the Station's license. First, although Rice was convicted more than a decade ago, the ten-year period that the Commission generally considers as relevant to character considerations has no bearing on whether the underlying allegations of misconduct can be proved or disproved where, as here, there are felony convictions, adverse character determinations, and license revocations that are not subject to retrial in this hearing. Without other compelling evidence of rehabilitation, a rote application of the Commission's general ten-year time limitation policy would not serve the public interest in this instance.

7. The Bureau's review of the materials submitted in support of the Assignment Application leads it to conclude that the testimonials therein are of limited probative

value. For example, while LBI avers that the State of Missouri has “fully restored” Rice to his rights as a citizen, as evidence of his full rehabilitation, it neither defines “full restoration of rights,” nor mentions Rice’s required inclusion on an official Sex Offender Registry as a consequence of his conviction. LBI further provides a two-page letter, dated October 31, 2011, from Wayne A. Stillings, M.D. (Stillings), Rice’s psychiatrist for the last 20 years, attached to which is Stillings’s eight-page Declaration, executed May 17, 2001, more than ten years prior to the letter. Stillings states that Rice’s conduct that led to his criminal convictions was the result of a combination of psychiatric illnesses that are physiological in nature, and that Rice could not control his conduct and was unaware of these illnesses prior to commencing treatment in 1991. Stillings states that each of Rice’s disorders has been in remission for approximately ten years, and that there is no reason to anticipate that any of Rice’s disorders will again become active as long as Rice continues to take his prescribed medications and to pursue the appropriate therapy. The Bureau finds, however, that Stillings’s testimony substantially contradicts the record in this case, or is beyond the scope of expert medical testimony, setting forth conclusions of law rather than of medicine or psychiatry. Moreover, the declaration’s age raises questions regarding its probative value.

8. Additionally, the materials submitted do not deal in any meaningful way with Rice’s lack of candor and misrepresentation regarding his participation in the management and operation of his stations following his arrest, the second independent ground underlying the revocation of LBI’s prior authorizations. Misrepresentation and lack of candor are sufficient grounds for revocation of licenses, and were cited as separate and independent grounds for revoking the Rice Companies’ authorizations. (CMI Decision, 13 FCC Rcd

at 14459) However, LBI's rehabilitation showing is almost exclusively devoted to Rice's criminal convictions. Any determination regarding Rice's or LBI's qualifications to be a Commission licensee must evaluate Rice's candor and truthfulness before the Commission. The Application does not present a sufficient record on which to make that determination. The four letters submitted on Rice's behalf consist either of vague platitudes concerning Rice's honesty, his positions with non-broadcast associations, and his personal kindness, or speak only of Rice's technical expertise as a broadcaster. Such statements shed little light on Rice's character as a potential Commission licensee, particularly given that there is no indication that the declarants are aware of the details of Rice's background or his prior criminal acts, and could therefore speak to his rehabilitation from those past acts. The Bureau is unable to find on the basis of these letters that Rice possesses the requisite good character to become a Commission licensee.

9. With regard to Child Protect's Informal Objection, so considered because it was untimely filed (see 47 CFR 73.3584(a)), the above discussion addresses Child Protect's first concern regarding Rice's past criminal convictions and potential rehabilitation. The Bureau finds, however, that Child Protect does not set forth facts sufficient to raise a substantial and material question of fact regarding Rice's alleged control over Station WRZB(AM), Wetumpka, Alabama. Rice's company CMI programs WRZB(AM) pursuant to a Local Marketing Agreement (LMA). Child Protect does not set forth specific facts, supported by the affidavit of a person with personal knowledge, demonstrating that WRZB(AM)'s licensee abrogated its ultimate responsibility for essential station functions. Child Protect therefore does not make out a prima facie case of any statutory or rule violation, and the Bureau declines to designate this issue.

10. In light of the foregoing, the Bureau believes that there remain substantial and material questions of fact as to whether Rice, and therefore LBI, possesses the requisite character qualifications to be a Commission licensee. Having examined all of the record evidence regarding Rice's character and finding it lacking in probative value, and given the seriousness of the criminal behavior in which Rice engaged, the Bureau believes that a hearing before an Administrative Law Judge is warranted. Such a hearing will provide the best forum to evaluate whether Rice has been rehabilitated to an extent that the Commission is fully confident Rice will refrain from engaging in the kind of behavior for which he was convicted; Rice and/or LBI can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission; and Rice and/or LBI will comply in all other respects with the Commission's Rules, regulations, and policies. Consequently, appropriate issues will be designated for hearing.

11. ACCORDINGLY, IT IS ORDERED that, pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the Assignment Application, File No. BALFT-20120523ABY, IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues: (a) To determine the effects, if any, of Michael S. Rice's felony convictions on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee; (b) To determine the effects, if any, of the misrepresentation and lack of candor by Michael S. Rice's broadcast companies on his qualifications and/or the qualifications of Lake Broadcasting, Inc., to be a Commission licensee; (c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Michael S. Rice and/or Lake Broadcasting, Inc., is qualified

to be a Commission licensee; and (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned Application for consent to the assignment of license for Station W238CE should be granted.

12. IT IS FURTHER ORDERED that to avail themselves of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to § 1.221 of the Commission's rules, Lake Broadcasting, Inc., and Patrick Sullivan, in person or by their attorneys, SHALL FILE, within 20 days of the mailing of this Hearing Designation Order, written appearances in triplicate stating their respective intentions to appear on the date fixed for hearing and to present evidence on the issues specified in this Hearing Designation Order.

13. IT IS FURTHER ORDERED, pursuant to § 1.221 of the Commission's rules, that if Lake Broadcasting, Inc., or Patrick Sullivan fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the Presiding Administrative Law Judge shall expeditiously dismiss the captioned application with prejudice for failure to prosecute.

14. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, IS MADE A PARTY to this proceeding without the need to file a written appearance.

15. IT IS FURTHER ORDERED, that a copy of each document filed in this proceeding subsequent to the date of adoption of this Hearing Designation Order SHALL BE SERVED on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the

Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy SHALL BE ADDRESSED to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

16. IT IS FURTHER ORDERED, that the Presiding Administrative Law Judge shall not, in the context of this hearing proceeding, relitigate any of the findings of fact and/or conclusions of law contained in any order or opinion relating to the state court proceeding in which Michael S. Rice was determined to be a convicted felon or in any order or opinion relating to the Commission proceeding in which Michael S. Rice and/or the broadcast companies in which he held an interest were previously determined to be unqualified.

17. IT IS FURTHER ORDERED, that, in accordance with section 309(e) of the Communications Act of 1934, as amended, the burdens of proceeding with the introduction of evidence and of proof with respect to all issues designated herein SHALL BE upon the parties to the captioned application.

18. IT IS FURTHER ORDERED that, given the very serious questions that exist as to whether Michael S. Rice and/or Lake Broadcasting, Inc. is qualified to hold a Commission license and operate a radio facility in the public interest, the Presiding Administrative Law Judge shall, to the fullest extent possible, ensure that each of the issues designated herein is thoroughly explored and his Initial Decision is predicated on a full and complete evidentiary record.

19. IT IS FURTHER ORDERED, that the parties to the captioned application shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C.

311(a)(2), and § 73.3594 of the Commission's rules, 47 CFR 73.3594, GIVE NOTICE of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Commission's rules, 47 CFR 73.3594(g).

20. IT IS FURTHER ORDERED that the December 20, 2012, letter filing of Child Protect IS DISMISSED as a Petition to Deny. IT IS FURTHER ORDERED that the December 20, 2012, letter filing of Child Protect IS DENIED as an Informal Objection as to the allegations therein regarding an unlawful transfer of control of station WRZB(AM) to Contemporary Media, Inc. and/or Michael S. Rice.

21. IT IS FURTHER ORDERED that copies of this Hearing Designation Order SHALL BE SENT via Certified Mail, Return Receipt Requested, and by regular first class mail to the following: Jerold L. Jacobs, Esq., Law Offices of Jerold L. Jacobs, 1629 K Street, NW., Suite 300, Washington, DC 20006 (Attorney for Patrick Sullivan and Lake Broadcasting, Inc.); Patrick Sullivan, 22932 Abrolat Road, Wright City, MO 63390; Lake Broadcasting, Inc., P.O. Box 1268, St. Peters, MO 63376; Jannah M. Bailey, Executive Director, Child Protect, 935 S. Perry Street, Montgomery, AL 36104.

Federal Communications Commission.

William T. Lake,
Chief, Media Bureau.

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